

**SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION  
DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE  
TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES  
28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4128, 5.4133, 5.4135. 5.4136,  
5.4141-5.4147, 5.4148, and 5.4149**

**§5.4101. Applicability.**

(a) Sections 5.4101, 5.4102, 5.4111 - 5.4114, 5.4121, 5.4123 - 5.4128, 5.4133 - 5.4136 [~~5.4131—5.4134~~], and 5.4141 - 5.4149 [~~5.4147~~] of this division are a part of the Texas Windstorm Insurance Association's plan of operation and shall control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation). If a court of competent jurisdiction holds that any provision of this division is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the sections in this division shall remain in effect.

(b) Notwithstanding any provision in this subchapter, the department retains regulatory oversight of the association [~~Association~~] as required by the Insurance Code Chapter 2210, including periodic examinations of the accounts, books, and records of the association [~~Association~~] and no provision should be interpreted as negating or limiting the department regulatory oversight of the association [~~Association~~].

**§5.4102. Definitions.** The following words and terms when used in this division shall have the following meanings unless the context clearly indicates otherwise:

(1) - (4) (No change.)

(5) Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors ~~[Association's Board of Directors]~~, excluding expenses related to catastrophic losses.

(6) - (7) (No change.)

(8) Catastrophe year--A calendar year in which an occurrence or series of occurrences results in insured losses, regardless of when the insured losses are ultimately paid.

(9) ~~[(8)]~~ Catastrophic event--An occurrence or a series of occurrences in a catastrophe area resulting in insured losses and operating expenses of the association ~~[Association]~~ in excess of premium and other revenue of the association ~~[Association]~~.

(10) ~~[(9)]~~ Catastrophic losses--Losses resulting from a catastrophic event.

(11) Class 1 payment obligation--The contractual amount of net premium and other revenue that the association must deposit in the obligation revenue fund at specified periods for the payment of class 1 public securities security obligations, public security administrative expenses, and contractual coverage amount as required by class 1 public security agreements.

(12) ~~[(10)]~~ Class 1 public securities--A debt instrument or other public security that the TPFA may issue as authorized ~~[to be issued by the TPFA]~~ under the Insurance Code §2210.072 and Subchapter M of Chapter 2210, Insurance

Code. (13) ~~[(11)]~~ Class 2 public securities--A debt instrument or

67                   other public

68   security that the TPFA may issue as authorized ~~[to be issued by the TPFA]~~ under the

69   Insurance Code §2210.073 and Subchapter M of Chapter 2210, Insurance Code.

70

71

72                   (14) ~~[(12)]~~ Class 3 public securities--A debt instrument or other public

73   security that the TPFA may issue as authorized ~~[to be issued by the TPFA]~~ under the

74   Insurance Code §2210.074 and Subchapter M of Chapter 2210, Insurance Code.

75

76

77                   (15) ~~[(13)]~~ Commercial paper notes--A debt instrument that the

78   association may issue as a financing arrangement or the TPFA may issue as any

79   class of ~~[type of class 1]~~ public security ~~[issued by the TPFA]~~.

80

81                   (16) ~~[(14)]~~ Commissioner--Commissioner of Insurance of the State of

82   Texas.

83

84

85                   (17) ~~[(15)]~~ Comptroller--Comptroller of the State of Texas.

86

87                   (18) ~~[(16)]~~ Contractual coverage amount--Minimum amount over

88   scheduled debt service that the association ~~[Association]~~ is required to deposit in

89   ~~[into]~~ the applicable public security obligation revenue fund, premium surcharge trust

90   fund, or member assessment trust fund as security for the payment of debt service on

91   the public securities, administrative expenses on public securities, or other payments

92   the

93   association must pay ~~[required to be paid by the Association]~~ in connection with

94   public securities.

95

96                   (19) ~~[(17)]~~ Credit agreement--An ~~[A loan]~~ agreement described by the

97   Government Code Chapter 1371 that the TPFA may issue as authorized under the

98  
99 Insurance Code Chapter 2210, Subchapter M [~~revolving credit agreement, agreement~~  
100  
101 ~~establishing a line of credit, letter of credit, reimbursement agreement, insurance~~  
102  
103 ~~contract, commitment to purchase obligations, purchase or sale agreement, interest-~~  
104 ~~rate~~  
105  
106 ~~management agreement, or other commitment or agreement authorized by the TPFA-~~  
107 ~~in~~  
108  
109 ~~anticipation of, related to, or in connection with the authorization, issuance, sale,~~  
110 ~~resale,~~  
111  
112 ~~security, exchange, payment, purchase, remarketing, or redemption of some or all of~~  
113 ~~its~~  
114  
115 ~~public security obligations or interest on public security obligations, or both, or as~~  
116  
117 ~~otherwise authorized by Chapter 1371 of the Government Code].~~

118  
119 (20) [(18)] Department--Texas Department of Insurance.  
120

121 (21) Earned premium--That portion of gross premium that the  
122 association  
123

124 has earned because of the expired portion of the time for which the insurance policy  
125 has  
126  
127 been in effect.  
128

129 (22) [(19)] Financing arrangement--An agreement between the  
130 association and [with] any market source under which the market source makes  
131 interest bearing loans or provides other financial instruments to the association  
132 [Association] to enable the association [Association] to pay losses or obtain public  
133 securities under the

134 Insurance Code §2210.072. A financing arrangement is not a credit agreement or  
135

136 public security.

137  
138 (23) [(20)] Gross premium [premiums]--The amount of premium the  
139 association receives [received by the Association], less premium returned to

141 policyholders for canceled or reduced policies. [The term does not include-

142 premium

143 surcharges collected by the Association pursuant to the Insurance Code §2210.259-  
144 and

145  
146 §2210.613.]

147  
148 (24) [(21)] Investment income--Income [received by the Association] from  
149 the investment of funds [held by or for the benefit of the Association].

150  
151  
152 (25) [(22)] Letter of instruction--The commissioner's or authorized  
153 department representative's signed written [Written] authorization and direction to an  
154 authorized representative of the trust company[, which is signed by the commissioner-  
155 or an authorized representative of the department].

156  
157 (26) [(23)] Losses--Amounts paid, or expected to be paid, on association  
158 [Association] insurance policy claims, including adjustment expenses,  
159 litigation expenses, [and] other claims expenses, and other amounts that are  
160 incurred in resolving a claim for indemnification under an association  
161 insurance policy.

162  
163 (27) Member assessment trust fund--A dedicated trust fund established  
164 by the TPFA and held by the trust company in which the association must  
165 deposit  
166 member assessments collected under the Insurance Code §2210.613 and  
167  
168

169     §2210.6135.  
170  
171     The member assessment trust fund may be segregated into separate funds or  
172  
173     accounts, including for the purpose of segregating class 2 and class 3 public  
174     security member assessments.

(28) [(24)] Net gain from operations--~~[The gain from operations,]~~ For [for] a  
calendar year or policy year ~~[as the case may be],~~ the amount of [including] all earned  
premium, ~~[and]~~ other revenue of the association [Association] , and distributions from  
the class 1 obligation revenue fund and the repayment obligation trust fund that are in  
excess of incurred losses, operating expenses, financial arrangement obligations, public  
security obligations, and public security administrative expenses ~~[amounts to satisfy in~~  
~~whole or in part the obligations of the Association incurred in connection with the~~  
~~Insurance Code Chapter 2210, Subchapters B-1, J, and M, including reinsurance, public~~  
~~securities and financial instruments].~~

(29) Net premium--Gross premium less unearned premium. Following  
the issuance of public securities, net premium is pledged for the payment of class 1  
payment obligation.

(30) [(25)] Net revenues [Revenues]--Net premium [Gross premiums  
~~received by the Association from policyholders,]~~ plus other revenue, ~~[less unearned~~  
~~premium,]~~ less scheduled policy claims, less budgeted operating expenses, less class 1  
payment obligation for that calendar year, less premium surcharge and member  
assessment repayment obligation for that calendar year, and less amounts necessary to  
fund or replenish the operating reserve fund.

(31) Obligation revenue fund--The dedicated trust fund established by the  
TPFA and held by the trust company in which the association must deposit net premium  
and other revenue for the payment of class 1 payment obligation.

(32) [(26)] Operating reserve fund [~~Reserve Fund~~]~~--Association or trust company held fund~~ [The amount budgeted each year by the Association] for the payment of budgeted scheduled policy claims and budgeted operating expenses [divided by four].

(33) [(27)] Other revenue [~~Revenue~~]~~--Revenue of the association~~ [Association] from any source other than premium [~~premiums~~]. Other revenue includes investment income on association [Association] assets.[:] Other [but other] revenue does not include premium surcharges and member assessments collected pursuant to the Insurance Code §§2210.259, 2210.613, 2210.6135, and 2210.6136 and interest income on those amounts [~~§2210.259, premiums surcharges collected from Association policyholders and other insurers under the Insurance Code §2210.613, Association member assessments collected under the Insurance Code §2210.613 and §2210.6135, and investment income on premium surcharges and member assessments collected under the Insurance Code §§2210.259, 2210.613, and 2210.6135~~].

(34) [(28)] Plan of operation--The association's [Association's] plan of operation as adopted by the commissioner pursuant to §2210.151 and §2210.152 of the Insurance Code.

(35) Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association pursuant to the Insurance Code §§2210.259, 2210.613, and 2210.6136.



(36) Premium surcharge and member assessment repayment obligation--

The amount of premium surcharge and member assessment that the commissioner has ordered the association repay under §5.4126 of this title (relating to Alternative for Issuing Class 2 and Class 3 Public Securities).

(37) Premium surcharge trust fund--The dedicated trust fund established

by the TPFA and held by the trust company in which the association must deposit premium surcharges collected under the Insurance Code §2210.613.

(38) [(29)] Public securities [Securities]--Collective reference to class 1

public securities, class 2 public securities, and class 3 public securities.

(39) Public security administrative expenses--Expenses incurred by the

association, TPFA, or TPFA consultants to administer public securities issued under the Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.

(40) [(30)] Public security obligations--The principal of a public security

and any premium and interest on a public security issued under the Insurance Code Chapter 2210, Subchapter M [this subchapter], together with any amount owed under a related credit agreement.

(41) Repayment obligation trust fund--The dedicated trust fund that the

trust company holds in which the association deposits net premium and other revenue that is not contractually required for the class 1 payment obligation in amounts necessary to comply with the commissioner's order under §5.4126 of this title for payment of the premium surcharge and member assessment repayment obligation.

(42) [(31)] Scheduled policy claims [~~Policy Claims~~]-That portion of the association's [~~Association's~~] earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event.

(43) [(32)] Trust company [~~Company~~]-The Texas Treasury Safekeeping Trust Company managed by the comptroller pursuant to the Government Code §404.101, et seq.

(44) [(33)] Trust company representative [~~Company Representative~~]-Any individual employed by the trust company [~~Trust Company~~] who is designated by the trust company as its authorized representative for purposes of any agreement related to the catastrophe reserve trust fund or the public securities.

(45) [(34)] TPFA--The Texas Public Finance Authority.

(46) [(35)] Unearned premium [~~Premium~~]-That portion of gross premium [~~premiums~~] that has been collected in advance for insurance that the association has not yet [~~been~~] earned [~~by the Association~~] because of the unexpired portion of the time for which the insurance policy has been in effect.

#### **§5.4121. Financing Arrangements.**

(a) The association [~~Association~~] may enter into financing arrangements. The financing arrangement must:

(1) enable the association to:

(A) pay losses under the Insurance Code §2210.072; or

(B) obtain public securities under the Insurance Code §2210.072;  
and[.]

(2) be approved by the association's ~~[Association's]~~ board of directors prior to the association ~~[Association]~~ entering into the financing arrangement.

(b) The association ~~[Association]~~ may pay a financing arrangement with any or all:

(1) net premium ~~[premiums]~~ and other revenue of the association ~~[Association]~~ that has not been pledged as security for class 1 payment obligations or required for premium surcharge and member assessment obligations;

(2) - (3) (No change.)

(4) the proceeds of any class of public security issued under the Insurance Code Chapter 2210; or ~~[and]~~

(5) any other association ~~[Association]~~ asset.

(c) As collateral security for such financial arrangements, including interest bearing loans or other financial instruments, the association ~~[Association]~~ may grant in favor of the applicable market source a collateral assignment and security interest in and to all or any portion of the association's ~~[Association's]~~ assets, including without limitation, all or any portion of the association's ~~[Association's]~~ right, title and interest in and to all proceeds of any class of public security issued under the Insurance Code Chapter 2210 ~~[or all class 1 public securities, including commercial paper notes, class 2 public securities, and/or class 3 public securities, with the priority of each such collateral~~

~~assignment and security interest, whether first or secondary, to be determined by the Association in its discretion].~~

**§5.4123. Public Securities Request, Approval, and Issuance.**

(a) The association's board of directors must request the issuance of public securities as prescribed in §§5.4124 - 5.4126 of this title (relating to Issuance of Class 1 Public Securities before a Catastrophic Event; Issuance of Public Securities after a Catastrophic Event; and Alternative for Issuing Class 2 and Class 3 Public Securities).

(1) The request must be submitted to the commissioner for approval with all required supporting documentation prescribed in §§5.4124 - 5.4126 of this title.

(2) The association's board of directors may request public securities as often as necessary.

(3) If multiple classes of public securities are combined into a single request, the request must separately identify and provide supporting documentation for the issuance of each class of public securities.

(4) The association's board of directors may submit a request for the issuance of public securities to be issued after a catastrophic event at any time. If the request for the issuance of public securities after a catastrophic event is submitted before a catastrophic event, the association's request must specify that the requested public securities may only be issued after a catastrophic event.

(b) The commissioner must approve the request before the TPFA may issue the requested public securities.

(1) If the supporting documentation is incomplete, the commissioner or the department may request additional documentation without rejecting the request.

(2) In considering the association's request, the commissioner may rely on any statements or notifications of definitive or estimated losses, association revenue, reinsurance proceeds, and any other related or supporting information from any source, including from the general manager of the association and from the TPFA and its consultants and counsel.

(3) If the commissioner disapproves the request, the association's board of directors may reconsider the matter and submit another request under subsection (a) of this subsection.

(4) The department must provide the commissioner's written approval of the request to the association and the TPFA.

(c) Following the commissioner's written approval of the request, the TPFA may issue public securities and credit agreements on behalf of the association as authorized in the Insurance Code Chapter 2210 and §§5.4124 - 5.4126 of this title for the issuance, reissuance, refinancing, and payment of public security obligations and public security administrative expenses.

(d) The association must provide to the department and the commissioner any requested information concerning public securities or the pending issuance of public securities, including information the TPFA, a TPFA contractor, or TPFA legal counsel provides to the association.

(e) A request for issuance of public securities under subsection (a) of this section includes a request for the reissuance and refinancing of public security obligations.

**§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.**

(a) The association's board of directors may request the TPFA to issue class 1 public securities before a catastrophic event, if the association's board of directors determines that the class 1 public security proceeds are necessary and the commissioner approves the request. The procedure for making the request and approval of the request is provided in §5.4123 of this title (relating to Public Securities Request, Approval, and Issuance).

(b) To obtain the commissioner's approval, the association must submit to the commissioner its board of director's written request for the TPFA to issue class 1 public securities and, in a manner that is acceptable to the commissioner, provide the following information:

- (1) the reason why the requested class 1 public securities are necessary;
- (2) the amount of premium and other revenue that the association expects will be available to pay loss claims in the current calendar year;
- (3) reinsurance coverage that the association expects will be available to pay claims in the current calendar year;
- (4) the amount in the CRTF that the association expects will be available to pay loss claims in the current calendar year;

(5) the principal amount of class 1 public securities that are authorized and available to be issued before a catastrophic event, and that are requested;

(6) the estimated amount of debt service for the public securities, including any contractual coverage requirement and public security administrative expenses;

(7) the structure and term of the public securities, including acceptable conditions for sale, rating levels, and interest rates; and

(8) a cost-benefit analysis as described in §5.4135 of this title (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis).

(c) The association may make one or more requests under this section.

(d) The association may request class 1 public securities up to an aggregate principal amount not to exceed \$1 billion outstanding at any one time, regardless of the calendar year or years in which the securities are issued; except that class 1 public securities that are issued before a catastrophic event and that have been used to pay for insured losses or expenses will not continue to count against the combined \$1 billion aggregate limit described in this subsection. This section does not authorize the association to request class 1 public securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this title (relating to Issuance of Public Securities after a Catastrophic Event).

**§5.4125. Issuance of Public Securities after a Catastrophic Event.**

(a) As provided in §5.4123 of this title (relating to Public Securities Request, Approval, and Issuance) and subject to the commissioner's approval, the association's board of directors may request the TPFA to issue public securities after a catastrophic event has occurred. The association's board of directors may make the request:

(1) after the catastrophic event if the association's board of directors determines that actual catastrophic losses are estimated to exceed available money in the CRTF and available reinsurance proceeds and that the public security proceeds are necessary to fund the catastrophic losses; or

(2) before the catastrophic event if the association's board of directors determines that public security proceeds may become necessary to fund potential catastrophic losses.

(b) To obtain the commissioner's approval, the association must submit to the commissioner its board of director's written request for the TPFA to issue public securities and provide in a manner that is acceptable to the commissioner the following information:

(1) an estimate of the actual, or potential, losses and expenses from the catastrophic event;

(2) the association's current premium and other revenue;

(3) the association's current net revenues;

(4) the sources and amount of loss funding other than public securities,

including:

(A) the amount of the loss paid from premium and other revenue;



(B) the amount requested from the CRTF;

(C) amounts available from other financing arrangements, and the association's obligations for other financing arrangements, including whether such amounts must be repaid from public security proceeds or from other means; and

(D) available reinsurance proceeds;

(5) the principal amount of each requested class of public securities that is authorized and available to be issued and that is requested;

(6) the estimated costs associated with each requested amount and class of public securities under this section, including any contractual coverage requirement and public security administrative expenses;

(7) the structure and term of the public securities, including acceptable conditions for sale, rating levels, and interest rates; and

(8) a cost-benefit analysis as described in §5.4135 of this title (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis).

(c) For each class of public securities requested under this section, the association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:

(1) the statutory authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of class 1 public securities, the proceeds of class 1 public securities issued pursuant to §5.4124 of this title (relating to issuance of Class 1 Public Securities

before a Catastrophic Event) that were available for a catastrophic event at the beginning of the catastrophe year for which the class 1 public securities are requested under this section; or

(2) the amount of the estimated loss, and estimated costs including the costs associated with the issuance of that class of public security.

(d) The association must request, in aggregate for each catastrophe year:

(1) the statutory authorized principal amount of class 1 public securities before class 2 public securities may be requested; and

(2) the statutory authorized principal amount of class 2 public securities before class 3 public securities may be requested.

(e) The association:

(1) may make one or more requests under this section;

(2) may, following a catastrophic event, request the issuance of class 1 public securities under this section, before the exhaustion of any remaining proceeds from class 1 public securities issued before a catastrophic event;

(3) must deplete the proceeds of any outstanding class 1 public securities issued before a catastrophic event before using the proceeds of class 1 public securities requested under this section; and

(4) may request the issuance of class 2 and class 3 public securities under this section, before the exhaustion of all class 1 or class 2 public security proceeds.

**§5.4126. Alternative for Issuing Class 2 and Class 3 Public Securities.**

(a) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4125 of this title (relating to Issuance of Public Securities after a Catastrophic Event) cannot be issued, class 2 and 3 public securities may be issued as provided in this section.

(b) The association must, in addition to the information required pursuant to §5.4125(b) of this title, provide the commissioner in writing the following information, including information based on the analyses described in §5.4135 of this title (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis):

(1) the amount of class 1 public securities that can be issued;  
(2) the amount of class 1 public securities that cannot be issued; and  
(3) the specific reasons, market conditions, and requirements that prevent the TPFA from issuing all or any portion of the authorized principal amount of class 1 public securities. The association may rely on information and advice provided by the TPFA, TPFA consultants, TPFA counsel, and third parties retained by the association for this purpose.

(c) The association must request the TPFA to issue the authorized principal amount of class 1 public securities that can be issued under §5.4125(c) of this title before class 2 public securities may be issued under this section.

(d) The commissioner may rely on information provided to the commissioner under this section, §5.4125 of this title, and from any other source, including information

and advice provided by the association, the TPFA, TPFA consultants, and TPFA counsel. If the commissioner finds that all or any portion of the authorized amount of class 1 public securities cannot be issued, the commissioner may order the issuance of class 2 public securities in an amount that does not exceed the authorized principal amount of class 2 public securities as determined in §5.4125(c) of this title.

(e) The order must specify:

(1) the maximum principal amount of class 2 public securities that are to be issued;

(2) the information and amount required under §5.4127(b) of this title (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments);

(3) the maximum term of the class 2 public securities;

(4) when the association is to begin collecting funds under this section for deposit in the repayment obligation trust fund;

(5) the premium surcharge and member assessment repayment obligation; and

(6) the year repayment begins under §5.4128 of this title (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers).

(f) The commissioner may revise the commissioner's order described in subsection (d) of this section if the commissioner determines revision is necessary due to the association's prepayment of amounts due or to maintain the association's ability

to fund the class 1 payment obligations or other association obligations, including losses.

(g) The TPFA may issue the class 2 public securities authorized in the commissioner's order under this section. The TPFA may issue the class 2 public securities that are subject to §5.4127(b) of this title as a separate series from other class 2 public securities.

(h) If class 2 public securities are issued in the manner authorized under this section, class 3 public securities may be issued only after class 2 public securities have been issued in the statutory authorized principal amount of \$1 billion for that catastrophe year. Notwithstanding the restriction on issuing class 3 public securities in this subsection, the association may request, the commissioner may approve, and the TPFA may prepare for the issuance of class 3 public securities prior to the issuance of all class 2 public securities. Class 3 public securities must be requested as provided in §5.4123 of this title (relating to Public Securities Request, Approval, and Issuance) and §5.4125 of this title.

**§5.4127. Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments.**

(a) All public security obligations and public security administrative expenses for class 2 public securities issued under §5.4126 of this title (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) must be paid 30 percent from member assessments and 70 percent from premium surcharges on those catastrophe area

insurance policies subject to premium surcharge under the Insurance Code §2210.613, including automobile and property insurance policies.

(1) For purpose of the premium surcharge, in this section and §5.4128 of this title (relating to Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers), the term insurer has the meaning that is defined in §5.4172 of this title (relating to Premium Surcharge Definitions).

(2) The association must collect and deposit the member assessments and premium surcharges as directed in §§5.4143 - 5.4145 of this title (relating to Trust Funds for the Payment of Class 2 Public Securities; Excess Class 2 Premium Surcharge Revenue; and Excess Class 2 Member Assessment Revenue).

(b) The commissioner's order described in §5.4126(d) of this title must require the association to repay the cost of the class 2 public securities issued under subsection (a) of this section in an amount equal to the lesser of:

(1) \$500 million total principal amount, plus any costs associated with that amount; or

(2) that portion of the total principal amount of class 1 public securities authorized to be issued as described in §5.4125 of this title (relating to Issuance of Public Securities after a Catastrophic Event) that cannot be issued, plus any costs associated with that portion.

(c) The association must repay the costs under subsection (b) of this section by repaying the amount of premium surcharges and member assessments that are paid, or

payable, on the total principal amount, plus any costs and contractual coverage amount associated with that amount.

(d) The sources of funds for the repayment required under subsection (b) of this section include:

(1) the association's net premium and other revenue that is not contractually pledged to class 1 payment obligations; and

(2) excess amounts released from the class 1 public security obligation revenue fund that are released as described in §5.4142 of this title (relating to Excess Obligation Revenue Fund Amounts).

(e) In addition to premium and other revenue amounts that the association must collect to pay for outstanding class 1 payment obligation, the association must collect premium and other revenue in an amount sufficient to repay the premium surcharge and member assessment obligation owed under the commissioner's order in subsection (b) of this section.

(f) Using either or both of the following methods, the association must repay the amounts required owed under the commissioner's order in subsection (b) of this section.

(1) To reduce the need for collecting premium surcharges and member assessments, the association may deposit funds described in subsection (d) of this section in the premium surcharge trust fund, member assessment trust fund, or both funds, before the collection of any premium surcharges or member assessments.

(2) The association may deposit funds described in subsection (d) of this section in the repayment obligation trust fund for repayment of class 2 premium surcharges and member assessments already collected.

(g) For each year in which the association owes amounts to repay member assessments or premium surcharges used to pay debt service for public securities described under subsection (b) of this section, the association must record the following information:

(1) the amount of premium surcharges the association owes to each insurer for that year; and

(2) the amount of member assessments the association owes to each insurer for that year.

(h) Notwithstanding any other requirement in this division, an insurer may pay on behalf of its policyholder all or any part of a premium surcharge that is subject to repayment under this section. If the insurer makes the payment under this subsection, the insurer is entitled to the repayment of that amount when the association repays it.

The insurer:

(1) may only pay the premium surcharge for amounts to pay the amounts of class 2 public security obligations and public administrative expenses associated with the amount to be repaid under the commissioner's order in subsection (b) of this section;

(2) must pay the premium surcharges for all policyholders of that insurer subject to the premium surcharge equally; and



(3) must track the amount of premium surcharges paid for their policyholders and those not paid.

**§5.4128. Repayment of Premium Surcharges to Policyholders and Member Assessments to Insurers.**

(a) When providing a repayment to insurers for amounts paid for class 2 premium surcharges and member assessments, the association must specify the surcharge and assessment period being repaid.

(b) Beginning with the year designated in the commissioner's order described in §5.4126 of this title (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), not later than March 1 of each year the association must direct payment of the funds held in the repayment obligation trust fund to the insurer or insurance group to which the funds are owed for repayment of premium surcharges or member assessments.

(c) Within 90 days of receipt of a premium surcharge repayment from the association, insurers must repay to the policyholders who made the payments all amounts received from the association. Premium surcharge repayments must be proportional to the amount of premium surcharge each insured paid in the period the association specified in its repayment. To the extent that the insurer paid all or any portion of the premium surcharge for its policyholders as provided under §5.4127 of this title (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), the insurer may

recoup the amount it paid for the period refunded from the association repayment as if it were the insured to whom the repayment was owed.

**§5.4133. Public Security Proceeds.**

(a) As necessary, the association must ~~[Association shall]~~ make written requests to the TPFA for the disbursement ~~[distribution]~~ of public security proceeds for the association ~~[Association]~~ program, including:

(1) for the payment of incurred claims and operating expenses of the association ~~[Association]~~; or

(2) other amounts as authorized in the Insurance Code §2210.608 ~~[to purchase reinsurance for the Association]~~.

(b) The association's ~~[Association's]~~ written request must specify:

(1) the amount of the request; and

(2) the purpose of the request.

(c) To facilitate timely payment of losses, the association ~~[Association]~~ may request funds to be disbursed to the association ~~[Association]~~ prior to the settlement of incurred claims.

(d) The association must ~~[Association shall]~~ account for the receipt and use of public security proceeds separately from all other sources of funds. The association ~~[Association]~~ may hold public security proceeds in the manner authorized by the association's ~~[Association's]~~ plan of operation or as required by agreement with the TPFA.

**§5.4135. Marketable Public Securities: the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.**

(a) Marketable public securities under this division are public securities for which the association in consultation with the TPFA determines:

(1) are consistent with state debt issuance policy requirements;

and

(2) achieve the goals of the association.

(b) In determining the amount of class 1 public securities that can and cannot be issued, the association must consider:

(1) the association's current premium and net revenue;

(2) the estimated amount of debt service for the public securities,

including any contractual coverage requirement;

(3) the association's obligations for outstanding class 1 public securities,

including contractual coverage requirements and public security administrative expenses;

(4) the estimated class 2 repayment obligations;

(5) the association's outstanding class 2 repayment obligations;

(6) the association's obligations for other financing arrangements;

(7) any conditions precedent to issuing class 1 public security obligations contained in any applicable public security financing documents;

(8) TPFA administrative rules;

(9) applicable State of Texas debt issuance policies;

(10) administrative rules of the Office of the Attorney General that require evidence of debt service and other obligation coverage; and

(11) market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.

(c) The association may rely on the advice and analysis of the TPFA, TPFA consultants, TPFA counsel, and third parties the association has hired for this purpose in determining "market conditions and requirements" under subsection (b) of this section. The association's determination may include consideration of the following factors:

(1) interest rate spreads;

(2) municipal bond ratings of the public securities;

(3) prior issuances of catastrophe related public securities in Texas or any other state;

(4) similar financings in the market within the preceding 12-month period;

(5) news or other publications relating to the association or the issuance of catastrophe related public securities;

(6) a nationally recognized investment banking firm's confidence memorandum;

(7) legal and regulatory conditions; and

(8) any other market conditions and requirements that the association deems necessary and appropriate.

(d) As part of each request for public securities, the association must submit to the commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the association. A cost-benefit analysis must include:

(1) for public securities requested under §5.4124 of this title (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a catastrophic event; and

(C) estimates of the monetary costs, benefits associated with, and the availability of funding alternatives, such as:

(i) purchasing additional reinsurance for similar funding and at a similar layer;

(ii) providing financing arrangements, or additional financing arrangements, that provide similar funding and at a similar layer; or

(iii) other alternative risk transfer arrangements, such as catastrophe bonds, that provide similar funding and at a similar layer;

(2) for public securities requested under this division following a catastrophic event:

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities and other benefits associated with issuing public securities; and

(C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

**§5.4136. Association Rate Filings.** While there are outstanding class 1 public securities, or there are repayment obligations under §5.4127(b) of this title (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), the association:

(1) must consider its obligations for the payment of class 1 public securities and the repayment of class 2 public securities, including the additional amount of any debt service coverage that the association determines is required for the issuance of marketable public securities in developing its rates;

(2) must include in a rate filing submitted to the department an analysis that demonstrates that the filed rates produce premium sufficient to provide for at least:

(A) the expected operating costs of the association, including expected non-hurricane wind and hail losses and loss adjustment expenses; and

(B) the expected payment of class 1 public security obligations and the expected repayment of class 2 public securities, including the additional amount of any debt service coverage the association determines is required for the issuance of marketable public securities, during the period in which the rates will be in effect; and

(3) must include a cost component in the rates sufficient to at least provide for the expected payment of class 1 public security obligations and the expected repayment of premium surcharge and member assessment repayment obligation during the period in which the rates will be in effect.

**§5.4141. Obligation Revenue Fund for the Payment of Class 1 Public Security Obligations and Operating Reserve Fund.**

(a) While class 1 public securities are outstanding, the association must ~~[all of the Association's net revenue shall be paid into the obligation revenue fund created for such class 1 public securities. The Association shall]~~ deposit net premium and other revenue in ~~[the required amounts in]~~ the obligation revenue fund ~~[created for class 1 public securities]~~ at such periods and in such amounts as required by the class 1 public security agreements to fund the class 1 payment obligation ~~[under agreements with the TPFA].~~

(b) Without limiting other options, the class 1 public security agreements may include an ~~[The]~~ operating reserve fund ~~[shall be held by the Association]~~. If the class 1 public securities obligation revenue fund does not contain sufficient money to pay debt service on the class 1 public securities, administrative expenses on the class public

securities, or other class 1 public security obligations, the association ~~[Association]~~ must ~~[shall]~~ transfer sufficient money from the operating reserve fund or other association held funds to the obligation revenue fund ~~[for class 1 public securities]~~ to make such payment.

**§5.4142. Excess ~~[Class 1 Public Security]~~ Obligation Revenue Fund Amounts.**

(a) Excess revenue collected in the obligation revenue fund ~~[to fund class 1 public security obligations]~~ that is disbursed to the association must ~~[Association shall]~~ be an asset of the association ~~[Association]~~ and may be used for any purpose authorized in the Insurance Code §2210.056, including as provided in §5.4127 of this title (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments), or deposited in ~~[into]~~ the CRTF ~~[catastrophe reserve trust fund]~~.

(b) As specified in the Insurance Code §2210.072(a), class 1 public securities may be repaid before their full term if the association's ~~[Association's]~~ board of directors elects to do so and the commissioner approves.

**§5.4143. Trust Funds ~~[Obligation Revenue Fund]~~ for the Payment of Class 2 Public Securities.**

(a) On receipt, the association must ~~[The Association shall]~~ deposit collected:

(1) premium surcharges ~~[and Association member assessments]~~

pursuant to the Insurance Code §2210.613 in the premium surcharge trust ~~[obligation~~



~~revenue] fund [created for class 2 public securities]. The trust company must~~  
~~[Association shall also] deposit in that premium surcharge trust [obligation revenue] fund~~  
~~any investment income earned on the premium surcharges [and Association member~~  
~~assessments] while these amounts are on deposit in the premium surcharge trust fund~~  
~~[held by the Association]. The deposits must [shall] be made as required under~~  
~~agreements with the TPFA and the trust company[:.]~~

(2) association member assessments pursuant to the Insurance Code  
§2210.613 in the member assessment trust fund. The trust company must deposit any  
investment income earned on the association member assessments while these  
amounts are held on deposit in the member assessment trust fund. The deposits must  
be made as required under agreements with the TPFA and the trust company.

(b) ~~[Pending deposit as required under subsection (a) of this section, the~~  
~~Association shall hold such collected premium surcharges and Association member~~  
~~assessments as required under agreements with the TPFA, or in the absence of an~~  
~~agreement, as required in the Association's plan of operation, including this section.~~  
~~Premium surcharges and Association member assessments collected by the~~  
~~Association pursuant to the Insurance Code §2210.613, must be held by the~~  
~~Association separately from all other Association funds.] The association [Association]~~  
~~may not directly or indirectly use, borrow, or in any manner pledge or encumber~~  
~~premium surcharges and association [Association] member assessments collected, or~~  
~~to be collected, by the association [Association] pursuant to the Insurance Code~~

§2210.613 except for the payment of class 2 public security obligations and as otherwise authorized in this title.

**§5.4144. Excess Class 2 Premium Surcharge Revenue.**

(a) Revenue collected in any calendar year from premium surcharges under the Insurance Code §2210.613 that exceeds the amount of class 2 public security obligations and class 2 public security administrative expenses payable in that calendar year from premium surcharges and interest earned on the [~~class 2 public security~~] premium surcharge trust [~~obligation~~] fund deposits may, in the discretion of the association [~~Association~~], be:

(1) used to pay class 2 public security obligations payable in the subsequent calendar year, offsetting the amount of the premium surcharge that would otherwise be required to be levied for the year under the Insurance Code Chapter 2210, Subchapter M;

(2) used to redeem or purchase outstanding class 2 public securities; or

(3) deposited in the CRTF [~~catastrophe reserve trust fund~~].

(b) As specified in the Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the association's [~~Association's~~] board of directors elects to do so and the commissioner approves.

**§5.4145. Excess Class 2 Member Assessment Revenue.**

(a) Revenue collected in any calendar year from a member assessment under the Insurance Code §2210.613 that exceeds the amount of class 2 public security obligations and class 2 public security administrative expenses payable in that calendar year from member assessments and interest earned on the member assessment trust fund created for class 2 public securities deposits may, in the discretion of the association, [may] be:

(1) used to pay class 2 public security obligations payable in the subsequent calendar year, offsetting the amount of the member assessment that would otherwise be required to be levied for the year under the Insurance Code Chapter 2210, Subchapter M; [or]

(2) used to redeem or purchase outstanding class 2 public securities; or

(3) deposited in the CRTF.

(b) As specified in the Insurance Code §2210.073(a), class 2 public securities may be repaid before their full term if the association's [Association's] board of directors elects to do so and the commissioner approves.

~~[(c) If options (1) and (2) of subsection (a) of this section have been fully satisfied, the excess member assessments may be deposited in the catastrophe reserve trust fund.]~~

**§5.4146. Member Assessment Trust [Obligation Revenue] Fund for the Payment of Class 3 Public Securities.**

(a) On receipt, the association must ~~[The Association shall]~~ deposit collected member assessments pursuant to the Insurance Code §2210.6135 in the member assessment trust ~~[obligation revenue]~~ fund ~~[created for class 3 public securities]~~. The trust company must ~~[Association shall also]~~ deposit in that member assessment trust ~~[obligation revenue]~~ fund any investment income earned on the member assessments while these amounts are ~~[held by the Association]~~ on deposit in the member assessment trust fund. The deposits must ~~[shall]~~ be made as required under agreements with the TPFA and the trust company.

(b) ~~[Pending deposit as required under subsection (a) of this section, the Association shall hold such collected Association member assessments as required under agreements with the TPFA, or in the absence of an agreement, as required in the Association's plan of operation, including this section. Member assessments collected by the Association pursuant to the Insurance Code §2210.6135, must be held by the Association separately from all other Association funds.]~~ The association ~~[Association]~~ may not directly or indirectly use, borrow, or in any manner pledge or encumber association ~~[Association]~~ member assessments collected, or to be collected, by the association ~~[Association]~~ pursuant to the Insurance Code §2210.6135, except for the payment of class 3 public security obligations and as otherwise authorized in this division.

#### **§5.4147. Excess Class 3 Member Assessment Revenue.**

(a) Revenue collected in any calendar year from a member assessment under the Insurance Code §2210.6135 that exceeds the amount of class 3 public security obligations and class 3 public security administrative expenses payable in that calendar year from member assessments and interest earned on member assessment trust fund created for class 3 public securities deposits may, in the discretion of the association, ~~[may]~~ be:

(1) used to pay class 3 public security obligations payable in the subsequent calendar year, offsetting the amount of the member assessments that would otherwise be required to be levied for the year under the Insurance Code Chapter 2210, Subchapter M; ~~[or]~~

(2) used to redeem or purchase outstanding class 3 public securities; or

(3) deposited in the CRFT.

(b) As specified in the Insurance Code §2210.074(a), class 3 public securities may be repaid before their full term if the association's ~~[Association's]~~ board of directors elects to do so and the commissioner approves.

~~[(c) If options (1) and (2) of subsection (a) of this section have been fully satisfied, the excess member assessments may be deposited in the catastrophe reserve trust fund.]~~

**§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed under §5.4127.**

(a) As required by the commissioner's order under §5.4126(d) of this title (relating to Alternative for Issuing Class 2 and Class 3 Public Securities), the association must deposit funds collected under §5.4127(d)(2) of this title (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments) in the repayment obligation trust fund. The trust company must deposit any investment income earned on these amounts while they are on deposit in the repayment obligation trust fund.

(b) The association may not directly or indirectly use, borrow, or in any manner pledge or encumber repayment obligation trust funds held by the trust company except as authorized under the Insurance Code Chapter 2210 and this division.

**§5.4149. Excess Repayment Obligation Trust Fund Amounts.** Following the payment of all class 2 public securities subject to repayment under §5.4127(b) of this title (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharges and Member Assessments) and the repayment of all amounts owed under §5.4127(b) of this title, any funds remaining in the repayment obligation trust fund must be disbursed to the association as an asset of the association and may be used for any purpose authorized in the Insurance Code §2210.056.